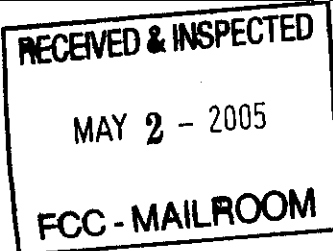


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April 29, 2005

Office of the Secretary
Federal Communications Commission
445 -12th Street, S.W.
Washington, D.C. 20554

RE: Appeal to the Federal Communications Commission
El Paso School of Excellence, Billed Entity No. 228919

To Whom It May Concern:

Enclosed please find an appeal from a decision by the Schools and
Libraries Division of the USAC relative to the school noted above.

Enclosed are an original and five copies of the Appeal and Request for
Expedited Relief. Please file the original and four of the copies and return
one time-stamped copy to me in the enclosed self addressed-stamped
envelope.

Please direct all communication regarding this appeal to my attention at
the address noted above. Thank you for your assistance in this matter.

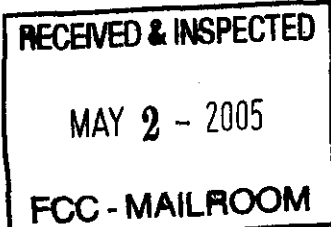
Yours truly,

Linda Schreckinger Sadler

Encl.

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Before the
Federal Communications Commission
Washington, D.C. 20554



In the Matter of:)	
Appeal of Decision of the)	
Universal Service Administrator)	CC Docket No. 02-6
)	
by)	
)	
El Paso School of Excellence)	File No. SLD -
El Paso, Texas)	
)	
)	
Federal-State Joint Board on)	
Universal Service Changes to the)	
Board of Directors of The National)	<u>APPEAL AND REQUEST</u>
Exchange Carrier Association, Inc.)	<u>FOR EXPEDITED RELIEF</u>

TO: Federal Communications Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

This Appeal made to the Federal Communications Commission ("FCC") seeking review of decisions by the Schools and Libraries Division ("SLD") Universal Service Administrative Company ("USAC") denying funding to El Paso School of Excellence (EPSOE") for Funding Year 2004-2005.

Appeal Is Taken From the Following Funding Commitment Decision Letter

(1)	Form 471 Application Number:	408268
	Funding Year 2004:	07/01/2004-06/30/2005
	Billed Entity Number:	228919
	Date of Funding Denial Notice:	March 1, 2005

Funding Request Numbers Appealed

FRN – 1118683

SLD's Reason for Funding Denial

The SLD denied funding on the basis that there was a “bidding violation.”

Statement in Support of Appeal

This appeal relates to the Funding Commitment Decision dated March 1, 2005 denying funding for Form 471 Application No. 408268 (FRN 1118683) for “bidding violation” to wit: “Similarities in description on Forms 470, Request For Proposal, and selective review responses among applicants associated with this vendor indicate that vendor was improperly involved in the competitive bidding and vendor selection process.”

It is the position of El Paso School of Excellence that had the SLD assessed and evaluated the individual facts associated with its application, it would not have improperly denied funding. The funding denial came without considering the distinctive facts and circumstances pertinent to the funding application filed by this Applicant and instead lumped it together with other charter schools which were denied funding for the same reason.

1. The SLD erred when it denied funding without analyzing the unique facts and circumstances relevant to El Paso School of Excellence's application

El Paso School of Excellence properly prepared, and timely filed, an FCC Form 471 for internal connections services. The SLD denied funding on the relevant FRN on the grounds that there was a violation of competitive bidding. Based on the Form 470

and 471 Applications and selective review responses of several similar charter schools, the SLD made a finding "that vendor was improperly involved in the competitive bidding and vendor selection process." The SLD committed reversal error when, on this basis, it denied funding to El Paso School of Excellence. The denial by the SLD was without consideration of the individual facts and circumstances distinct to EPSOE's application which should have been analyzed independently from the other schools associated with the vendor in question.¹ Further, the SLD failed to apply any standards of law in rendering its decision to deny funding to this school.

Had the SLD carefully reviewed the application filed by EPSOE, it would have easily ascertained that EPSOE is a small charter school located in El Paso, Texas. The funding obtained through its participation in the eRate program is essential to the continued implementation of the technology that benefits its students. As a small charter school it is without resources to hire consultants and/or train school personnel in eRate rules, regulations and procedures. As such, it must rely on the internet and other available resources for guidance and advice in preparing its eRate applications.

Prior to preparing and filing its Form 470 application, EPSOE asked RGC, Inc., the service provider alleged to have been involved in the program bidding violations, for assistance in locating resources upon which it could rely in preparing its application forms and Requests for Proposal ("RFP"). RGC is an SLD-registered service provider who specializes in providing eRate services to small charter schools in Texas. As such, it has knowledge of public resources that can be made available to these schools without

¹ See *Request For Review by "Consolidated Applicants"*, CC Docket No. 96-45, CC Docket No. 97-21 Order DA-01-1721 (Adopted July 19, 2001).

any actual involvement in the application preparation or bidding processes. Had the SLD acted appropriately and investigated the individual facts and circumstances concerning the similarities in the forms and applications of the individual charter schools associated with this provider, it would have learned that RGC had previously provided services to these schools, and having had a prior working relationship with them, in a neutral capacity, steered them to resources where they could obtain information useful in the preparation of their eRate forms and applications. RGC directed all the schools in question to the same public website(s) and public resources. Under USAC Guidelines, Service Providers are permitted to have neutral discussions with applicants in their marketing discussions.² Directing the schools to the same public resources was the sum total of RGC's involvement prior to being awarded a contract for the program year. Had the SLD efficiently inquired of EPSOE, it would have been able to determine that throughout the competitive bidding process, RGC remained neutral and uninvolved. Had the SLD properly investigated each individual application, it would likely have discovered factual discrepancies between the applications of the schools associated with RGC. It is also likely that it would have discovered that each of the schools belongs to The Association of Charter Educators of Texas, ("ACE") an organization that provides support to the Texas charter school community, and the members to one another. The common link of ACE membership could as easily provide explanation for the similarities in the applications and documentation of the schools as alleging association with the same vendor was improperly involved.

² See *"Chapter 5 - Service Provider Role in Assisting Customers"* at <http://www.sl.universalservice.org/vendor/manual/chapter5.asp>

Not having provided any specific basis for its findings, the language employed by the SLD in its Funding Decision Commitment Letter is unclear to what extent, if any, the SLD evaluated each of the schools' unique facts and circumstances.³ It was injudicious on the part of the SLD to make unsupported allegations and deny funding to EPSOE without reviewing its application and those of the other charter schools in this group on a case-by-case basis. The SLD had an obligation to properly investigate and assess the individual facts and circumstances associated with the application filed by EPSOE. Had it met its obligation it would not have made the erroneous finding that there were violations of the competitive bidding process and denied funding on that basis. EPSOE complied with program rules and regulations and deserves to have funding request evaluated on its merits. Therefore, the SLD's decision should be overturned and this matter remanded for further determination.

Conclusion

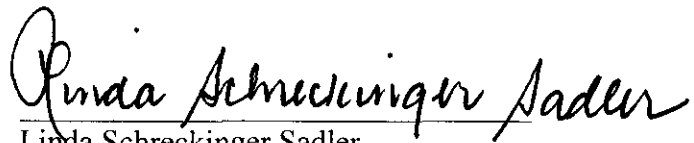
A review of the record supports the finding that the SLD failed to properly investigate and assess the individual facts and circumstances associated with the applications and forms filed by El Paso School of Excellence. The SLD committed reversible error when it denied funding on Application No. 408268 on the basis of a "bidding violation" to wit: "Similarities in description on Forms 470, Request For Proposal, and selective review responses among applicants associated with this vendor indicate that vendor was improperly involved in the competitive bidding and vendor selection process." The application of EPSOE is entitled to individualized scrutiny and this matter should be remanded to the SLD for further review.

³ See "*Consolidated Applicants*" *supra*, Section II: Discussion, at Paragraph 8

Applicant hereby requests:

1. That this matter be acted upon within 90 days or less of the filing date of this appeal;
2. That the FCC order funding for all FRN's set forth herein.
3. That funds be set aside to totally fund the District's request.

Respectfully submitted,



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